

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0279P

Withholding Tax

For the Months January 1, 2002 thru January 31, 2003

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed for the late filing of monthly withholding tax returns for the period January 1, 2002 thru January 31, 2003.

The taxpayer is a corporation domiciled in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be waived as the error is the result of an incompetent employee.

The Department points out that Federal regulations (to which the State of Indiana follows in this instance) state a taxpayer has control of an employee's performance and dereliction of duty on behalf of the employee is the responsibility of the taxpayer.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness,

thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied

TB/TG/JMS—032108